IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 340 of 2002

in

COMPANY PETITIONNo 156 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TWENTY FIRST CENTURY PRINTERS LIMITED.

Versus

O.L. OF KANORIA DYECHEM LTD.

Appearance:

1. COMPANY APPLICATION No. 340 of 2002

MR S.N. SOPARKAR, SR. ADVOACTE with MRS SWATI SOPARKAR for Petitioner No. 1

OFFICIAL LIQUIDATOR for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 29/03/2003

ORAL JUDGEMENT

Rule. Service of rule is waived by Dy. Official Liquidator Shri M.P. Shah. At the request of the learned advocate as well as the Dy. Official Liquidator, the application is finally heard today.

2. In this application, the applicant company has submitted that the applicant is having its registered office at 'Shiv Smriti', 49, Dr. Annie Besant Road, Worli, Mumbai 400 018 and the applicant apprehends that the Official Liquidator might take possession of its office and, therefore, it has been prayed that the opponent should be directed not to attach any part or portion of the premises referred to hereinabove.

3. Sr. Advocate Shri Soparkar appearing for the applicant has submitted that since 27.3.1992, the applicant company has been occupying the premises in question. The said premises belongs to Shri S.K. Gupta and as a licensee the applicant company is in possession of the premises. It has been submitted by him that in the past, on account of personal relations of some of the directors of the applicant company, the applicant company had permitted Kanoria Dyechem Ltd. (in provisional liquidation and hereinafter referred to as 'KDL') to use the premises in question as KDL wanted to have a branch office in Bombay and it was not having any office in Bombay. It has been submitted by the learned advocate that the applicant had not charged any amount by way of rent or otherwise from KDL for permitting KDL to use the premises in question. It has been further submitted that somewhere in June 2001, KDL stopped its business and in October 2001, it also stopped its manufacturing operations. In the circumstances, KDL did not require the premises in question even as its branch office and, therefore, with effect from October 2001, KDL has not used the said premises. It has been further submitted that as on today, and more particularly after October 2001, nothing belonging to KDL is lying at the premises in question and the premises in question is being used as a registered office of the applicant company and KDL is not using the said office at all.

4. It has been, therefore, submitted that KDL has no right or interest in the premises, which is in possession of the applicant as a licensee, and as KDL has no right or interest in the premises, the provisional liquidator cannot take possession of the premises referred to hereinabove.

5. The Dy. Official Liquidator has submitted that the premises in question was being used by KDL in the past. It has been submitted that the directors of the applicant and the directors of KDL are closely related to each other and there are certain directors, who are common in both the companies. It has been also submitted that KDL was transacting its business as a branch office from the premises in question. It has been submitted by him that if KDL is found to be a tenant or a licensee in respect of the premises in question, the provisional liquidator would get a right, which KDL has, in the premises in question. Thus, it has been submitted by him that the provisional liquidator should not be prevented from taking possession of the premises in question.

6. I have heard Sr. Advocate Shri Soparkar and Dy. Official Liquidator Shri M.P. Shah and have also perused the record pertaining to the case.

7. Upon perusal of the record, it is clear that the applicant company has been occupying the premises in question as a licensee of Shri S.K. Gupta, who appears to be the owner of the premises, and using the premises in question as its registered office. There is nothing on record to show that KDL is having its registered office at the premises in question. It could not be disputed by the Dy. Official Liquidator that KDL has stopped doing its business and the provisional liquidator has been appointed to take possession of the assets of KDL by this court on 17.9.2002. Thus, it is not in dispute that KDL is not having any business at present. Upon submissions made by Sr. Advocate Soparkar, it appears that after October 2001, KDL has not transacted any business from the said premises.

8. Simply because KDL had done some business or had occupied the premises in question for some time, in my opinion, KDL would not get any right in the premises in question. There is nothing to show that KDL had any right or interest in respect of the office in question. In this set of circumstances, as KDL had no right in the premises in question, in my opinion, the Official Liquidator cannot take possession of the premises in question as a provisional liquidator of KDL. If, however, it is found that KDL has some interest, it would be open to the Official Liquidator to submit his report to this court so that, after taking permission from this court, he can take possession of the premises in question.

9. Looking to the facts of the case, the Official Liquidator is prevented from taking possession of the premises at this stage.

The application is thus granted. Rule made absolute with no order as to costs.

(A.R. Dave, J.)

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